



RISK WATCH

... to insure and protect State assets, promote safety, and prevent losses through proactive, collaborative loss control and claims management ... - DRM Mission Statement

July 1, 2014

Volume 2, Issue 1

S.B. 56 and Permit Immunity For K-12 Public Schools

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Tani Downing, Director

As many of you are aware, the Legislature passed [S.B. 56 "Risk Management Amendments"](#) (effective May 13th, 2014). This new law grants governmental immunity to K-12 public schools when they "permit" use of their school/grounds to non-commercial

groups/individuals. These schools are currently required by the Legislature to be open to the community as "civic centers".

The Legislature expects in return that the schools will no longer require non-commercial users to bring evidence of sufficient liability insurance for that use. With this new law, Risk no longer recommends you require this insurance for non-commercial users (which include individuals and community groups).

However, for commercial users of the school/grounds where profit will be generated from the school's building or property use, Risk is not sure the civic centers statute applies. The schools may want to get the indemnification, insurance, and additional insured protections as before up to the Utah Governmental Immunity Act limits as noted in the article below.

So how will the "permit" work?

Risk recommends that in your property use policy and use agreements you change the name of the documents to something like "Permit and Use Policy" or "Permit and Use Agreement" and include language such as, "the use of school buildings and grounds is granted pursuant to the Utah Civic Center statutes at UCA § 53A-3-413 - 414. Approval under this policy is a Permit under the Civic Center statutes and grants the District full legal immunity under the Governmental Immunity Act of Utah pursuant to § 63G-7-301." A sample use agreement and permit was sent to district superintendents and is available upon request to Risk.

How will individuals/groups that walk onto the grounds be advised of the new permit immunity for their use?

Risk Management has purchased two signs (pictured) for each school. Additional signs will be available to the districts/schools for a low price. You'll want to consider the best locations for these signs to give notice to those who use the grounds but don't go through the office for permission. Contact Lucy at lpalaita@utah.gov for more information.

Does this mean the school or the district won't be sued for injuries occurring on the property?

We wish we could

See Exclusions Page 6

Datapoints-

- ◆ 6.7— Four-year average number of claims received each day for all lines of coverage for all insured organizations. (FY11-FY14YTD)
- ◆ 138 - Number of insured entities with claims filed over the past 4 years.

Did You Know?

It's incredibly easy to get a discount on your insurance premium, and you can improve the safety of your organization at the same time - see page 2 for more info on how.

New GIA Limits

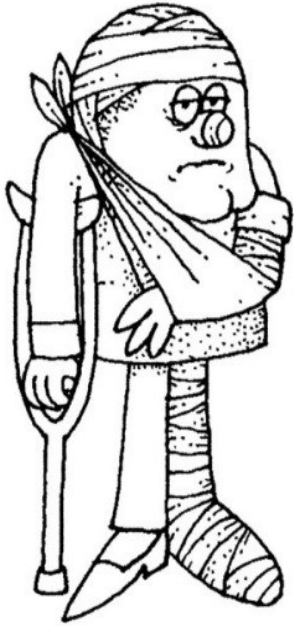
- Stephen Hewlett

The Risk Manager has the responsibility to establish new Utah Governmental Immunity Act limitations on judgments pursuant to UCA 63G-7-604(4) every two years.

Effective July 1, 2014, the new limits for personal injury damages against a governmental entity increased from \$674,000 to \$703,000 per person/per occurrence, and from \$2,308,400 to \$2,407,700 in the ag-

gregate for two or more persons in an occurrence.

The limit for property damages against a governmental entity is also increased from \$269,700 to \$281,300 in any one occurrence. The new limits of judgment apply to claims that occur on or after July 1, 2014. For the limits applicable to past claims, see Risk Management Administrative Rule at: <http://www.rules.utah.gov/publicat/code/r037/r037-004.htm#T3>.



All you ever wanted to know about Work Comp (and more)!

Workplace Safety Grant from the Utah Labor Commission

-Julie Clark

A new program sponsored by the Utah Labor commission aims to:

1. Increase workplace safety by reducing accidents;
2. Promote employer\employee awareness of the need for workplace safety;
3. Assist employers in establishing new programs or supplementing existing programs which promote workplace safety; and
4. Inform employers and employees of resources available through the Labor Commission to assist them in improving workplace safety programs.

In order to accomplish these goals they offer a **Workplace Safety Grant** to businesses, educational institutions and community agencies who demonstrate a commitment to workplace safety and a desire to implement initiatives which promote either new or existing safety programs within the workplace. Click on the link to access more information. <http://laborcommission.utah.gov/services/WorkPlaceSafety/index.html>

Summary of the Grant Program:

Every year, the Utah Labor Commission accepts applications for grant projects or initiatives demonstrating a commitment to workplace safety (WPS). Some of the proposals may include, but are not limited to:

- Development of workshops and training;
- Implementation of specialized safety programs;
- Increasing effort and resources for existing programs; and
- Collaborative workplace safety training between organizations

Entities eligible to apply for a grant include Utah businesses, community-based organizations, Utah non-profits and local associations and educational institutions

The WPS Committee of the Labor Commission has identified key priorities upon which to focus safety prevention

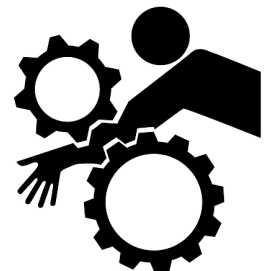
efforts for the upcoming year.

The focus is with industries and occupations that have higher incidences of workplace accidents and fatalities such as construction, manufacturing and highway safety, as well as projects that assist Utah employers in maintaining safer work environments regardless of language and cultural barriers.

For general information and requests about Labor Commission services, community presentations, and outreach contact:

Elena Bensor
Community Relations/Public Information Officer
elenabensor@utah.gov
(801) 530-6918

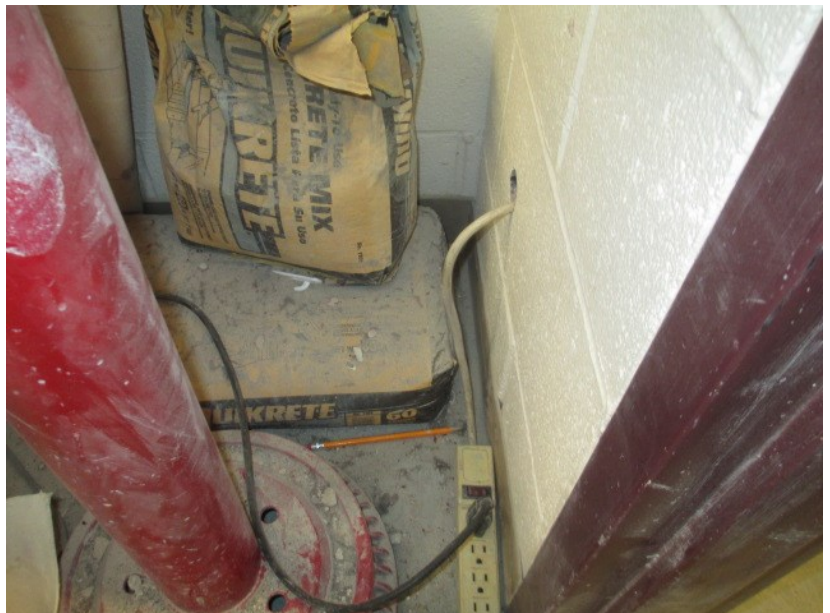
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Tom's Brain Teaser

The shop technicians received their new bench grinder yesterday, and quickly installed it over at the north end of the shop. Your curiosity was peaked because there weren't any electrical outlets at that location...

See the answer on Page 7! Email your answer to jamesbrown@utah.gov with "TBT" in the subject line. A winner will be randomly selected from all the correct answers and win a prize!



Funsucker Award - When a picture is worth a thousand words (and saves a few thousand dollars!)

-Tom Merrill

This series of photos is a good example of how bullets can be dodged and how you and your building don't end up as the lead story on the 6 O'Clock News!

I first inspected Escalante High in October 2005, and one of the safety issues I noted was the lack of protection for the building's natural gas line, which runs along the back of the school and next to a dumpster.



On my second visit to Escalante High a year later, a metal bar had been installed (see photo at left) at the back of the building to protect the gas line from vehicle and garbage dumpster impact.

On my visit to Escalante High this April, a large dent was noted in the gas line protection bar (right). The custodian said that a milk delivery truck backed into the metal bar. If not for the protection bar they had installed, the results could have been disastrous.

Great job Escalante High and Garfield County School District!



Proper Documentation and Disciplinary Action

-Sol Garcia

The following scenarios will serve to illustrate how the amount of documentation in an employee's file can impact outcomes. One employer documented effectively and one did not. See if you can tell the difference.

#1 A school principal has made a decision not to renew the contract of a career employee because of unsatisfactory performance. The principal argues that the employee is simply not meeting expectations and creating conflict within the team. Constant complaints come in and other employees are refusing to work with

this person. Parents complain and want their child reassigned to a different classroom.

When the personnel director reviews documents on this employee, she notices that for the last two years this person received successful ratings in all areas evaluated and there are classroom observations with positive comments.

There are also some supervisor notes reflecting conversations about complaints. The notes explain how the employee refuted the complaints and became "overly emotional." The notes mention the employee disclosed having some mental health problems which had been affecting her work and how she related with others. The notes also mentioned that her new medications had not taken full effect.

This disclosure of a medical condition was news to the personnel director. The supervisor noted that he would meet with the employee at another time but there is no record of any follow-up.

There is no specific mention of what is expected of the employee or consequences of not meeting expectations.

The personnel director meets with the employee, who threatens to sue and alleges she has been harassed by members of the team because she disclosed her mental health problems.

#2 Meanwhile in a different school - A principal decides to terminate a career employee for cause. This employee has exhibited time and attendance problems for all 3 years he has been at the school and has left fourth-grade students unsupervised on several occasions.

When this happens, the school administrators have to drop everything and address the situation. This employee has diabetes and alleges that he leaves when his insulin levels are unstable.

Upon reviewing the record, the personnel director found the following documents: evaluations which consistently reflect a time an attend-



ance problem, disciplinary records explaining to the employee the attendance expectations pursuant district policies, records of the employee's actual attendance patterns and notes of a disciplinary meeting where the employee informed the principal he has diabetes. Also present in the employee's file are a note signed by the employee wherein the principal refers him to the district's ADA coordinator for assistance; ADA interactive process documents with approved accommodations; notes from the principal to the employee explaining how he failed to follow what was agreed by him within the accommodations provided. Moreover the file contains a letter from the employee apologizing for leaving students unsupervised after having agreed to contact the main office to request immediate coverage in case of problems with diabetes.

Yes, all that information was there. Who do you think will have an easier time defending a negative employment action?

*One employer
documented
effectively
and one did
not*

Off-Duty Liability Coverage

-Debbie Bowen

With the passing of House Bill 196, law enforcement employees in the Attorney General's Office are allowed to use their state-issued vehicles for off-duty use. Risk Management procured additional liability insurance for the officers through its insurance broker to cover off-duty liability.

In the past, Risk Management only provided \$25,000/\$65,000 for off-duty liability coverage, which are the minimums required by State law. This new commercial insurance pool can provide up to \$1 million in liability for off-duty use. Risk Management will still cover off-duty and on-duty property damage and on-duty liability. This means that

any authorized officer enrolled in the new commercial insurance program who is involved in a off-duty crash and is sued by a 3rd party, will have insurance protection up to \$1,000,000.

Also, if the law enforcement employee is driving his/her state owned vehicle for personal off-duty use and is

called to an emergency, then Risk Management will take over the liability since the employee will be back on duty. To date the Attorney General's Office, Utah Highway Patrol, Utah State University and Granite School District have taken advantage of this new policy.

If you have any questions, or

ASBESTOS WAS A SCHOOL SAFETY ISSUE MANY YEARS AGO... AND TODAY!

- Tom Merrill

"I thought we addressed this issue back in the 1980's. Why did we receive a citation last week?"

School administrators have many regulatory acronyms that they must have a working knowledge of, including ADA, HIPAA, and perhaps one from the 1980's called AHERA. It is unwise to assume that just because a school may have taken action to address certain federal compliance requirements many years ago that no further action is necessary. Take AHERA for instance.

AHERA, the Asbestos Hazard Emergency Response Act, applies specifically to schools and requires schools to:

- Perform an original inspection to determine whether asbestos-containing materials are present and then *re-inspect* asbestos-containing material in each school *every three years*;
- Develop, maintain, and update an asbestos management plan and *keep a copy at the school*;
- Provide *yearly notification to parent, teacher, and employee organizations* on the availability of the school's asbestos management plan and any asbestos-related actions taken or planned in the school;
- Designate a *contact person* to ensure the responsibilities of the public school district or the non-profit school are properly implemented;
- Perform *periodic surveillance* of known or suspected asbestos-containing building material;
- Ensure that *trained and licensed professionals* perform inspections and take responsive actions; and
- Provide *custodial staff* with asbestos-awareness *training*.

AHERA requires that an *asbestos management plan* be kept at the school. The plan must include:

- Name and address of each school building and whether the building has asbestos-containing building material, and the type of asbestos-containing material;
- Date of the original school inspection;
- Plan for re-inspections (*remember, it is*

See Asbestos on Page 6



Anthophyllite asbestos

From the Office of the Utah State Fire Marshal:

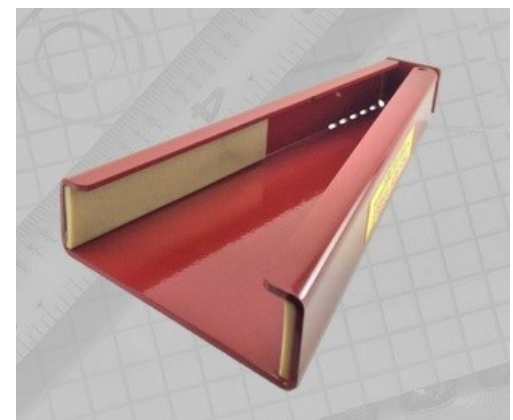
We asked and they answered:

Thank you for your inquiry regarding the [recent news media release](#) of a locking device in the wake of another unfortunate school shooting. The Office of The State Fire Marshal is continually working towards reasonable solutions to allow for active shooter scenario protection while meeting the requirements of the Fire Code and State Law. The proposed hard-

ware device presented in the media release that is applied to the door closure arm prevents the normal function of the door and is **not allowed** as per International Fire Code Section 1008.1.9. regarding Door Operations as it pertains to locking and latching hardware. In that section it specifically states in 1008.1.9.5 "Unlatching- The unlatching of any door shall not require more than one operation", such as the turning of a knob or ap-

plied pressure to a panic hardware paddle. The application of the hardware as presented in the media release would prevent occupants from exiting the room under other contingencies with the inability to safely remove the device for normal operation of the door. Please contact me for any further questions or concerns that you may have, thank you.

Bryan Thatcher
Deputy State Fire Marshal



<http://www.fightingchancesolutions.com/>

Dept of Public Safety
bthatcher@utah.gov

Asbestos cont. from Page 5

required once every 3 years);

- Blueprint that clearly identifies the location of asbestos-containing building materials that remains in the school;
- Description of any response action or preventive measures taken to reduce asbestos exposure;
- Copy of the analysis of any building, and the name and address of any laboratory that sampled the material;
- Name, address, and telephone number of the "designated person" or contact to ensure the duties of the school district or non-profit pri-

vate school are carried out; and

- Description of steps taken to inform workers, teachers, and students or their legal guardians about inspections, re-inspections, response actions, and periodic surveillance.

As can be noted with this oldie but goodie law passed in the 1980's, AHERA requires *continued action* to meet mandatory compliance standards and avoid a school district citation.

Exclusions - cont. from Page 1

guarantee that, but anyone can sue. Hopefully the permit immunity notice in your policy, Permit and Use Agreement and the signs on your property will dissuade future

lawsuits. But in the event your school or district is named in a lawsuit for this use, State Risk and the AG's office will argue that you have governmental immunity and request the court dismiss the case.

Off-duty - cont. from Page 1

would like to see if your agency could benefit from this law enforcement policy, please contact Debbie Bowen at State Risk Management, 801-538-9669 or debbiebowen@utah.gov.



Division of Risk Management

5120 State Office Building
P O Box 141321
Salt Lake City UT 84114-1321

Phone: 801-538-9560
Fax: 801-538-9597
Email: jamesbrown@utah.gov

BRAIN TEASER ANSWER-
ANSWER: The workers had drilled a hole in the cinder block wall, routing the surge protector electrical cord through the hole to plug into an electrical outlet located on the other side of the wall. This violated an OSHA electrical safety regulation and would be citable.

REGULATORY AUTHORITY

29 CFR 1910.305(g)(1)(iv) Unless specifically permitted otherwise in paragraph (g) (1)(ii) of this section, flexible cords and cables may not be used: (A) As a substitute for the fixed wiring of a structure; (B) Where run through holes in walls, ceilings, or floors; (C) Where run

through doorways, windows, or similar openings; (D) Where attached to building surfaces; (E) Where concealed behind building walls, ceilings, or floors; or (F) Where installed in raceways, except as otherwise permitted in this subpart.

Did you answer correctly? Send an email to jamesbrown@utah.gov with "TBT" in the subject line and tell us. A winner will be randomly selected to win a prize!

Only three people responded - so three people won!

Last Quarter's Winners -
Barbara Smith - DHRM
Priscilla Anderson - DFCM
Paul James - Bridgerland ATC

IMPORTANT DATES—UPCOMING TRAINING

July 23 - Title II Update - Rethinking Protocols for Managing Threatening Situations (RSVP to jgolom@utah.gov)

August 5 - Risk Symposium 1:00-4:30 State Office Building Auditorium

July 2014

Sun	Mo	Tue	We	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August 2014

Sun	Mo	Tue	We	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

September 2014

Sun	Mon	Tue	We	Thu	Fri	Sat
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				